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SUPREME COURT
STATE OF WASHINGTON

2009 JAN 20 10:11

NO. 82577-7
BY RONALD R. CARPENTER

SUPREME COURT OF THE STATE OF WASHINGTON

CLERK

SEIU LOCAL 925,

Petitioner,

v.

GOVERNOR CHRISTINE GREGOIRE,

Respondent.

ANSWER TO
PETITION AGAINST
STATE OFFICER

COMES NOW, the Honorable Christine Gregoire, Governor of the State of Washington, by and through the undersigned counsel, and in answer to the Petition Against State Officer filed in the above-captioned matter, admits, denies, and alleges as follows:

I. ANSWER TO PETITION

This Answer is submitted pursuant to the Ruling of this Court entered January 15, 2009. In this Section, each paragraph responds to the corresponding numbered paragraph of the Petition.

1. Respondent admits that RCW 41.56.028, portions of which are quoted in Paragraph 1 of the Petition, was enacted into law in 2006. Respondent is without information sufficient to admit the truth of the remaining allegations set forth in Paragraph 1 of the Petition, and therefore denies the same.

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2. Respondent admits that Arbitrator Michael Cavanaugh issued an interest arbitration award on August 25, 2008, which decided three issues certified for arbitration by the Executive Director of the Public Employment Relations Commission (PERC). Respondent admits that following the arbitration award the parties had a complete labor contract for the 2009-11 biennium, consisting of tentatively agreed articles and two articles decided through arbitration, contingent upon a determination of financial feasibility, and funding by the Legislature. Respondent denies all remaining allegations set forth in Paragraph 2 of the Petition.

3. Respondent denies the allegations set forth in Paragraph 3 of the Petition.

4. Respondent admits that the Governor's budget document submitted to the Legislature on December 18, 2008, does not contain a request for funds to implement the subsidy rate increases awarded by Arbitrator Cavanaugh, nor does it contain a request to implement other monetary increases tentatively agreed to by the parties in negotiations. Respondent admits that the budget document does not contain proposed legislation necessary to implement the labor contract, and denies all remaining allegations set forth in Paragraph 4 of the Petition.

5. Respondent denies the allegations set forth in Paragraph 5 of the Petition.

6. Respondent admits that Petitioner is the exclusive bargaining representative for approximately 6,500 family child care providers within the State of Washington. Respondent lacks sufficient knowledge to admit the truth of the allegations pertaining to the number of additional workers represented by Petitioner, and therefore denies the same. Respondent denies all remaining allegations set forth in Paragraph 6 of the Petition.

7. Respondent admits the allegations set forth in Paragraph 7 of the Petition.

8. Respondent admits the allegations set forth in Paragraph 8 of the Petition.

9. Respondent admits the allegations set forth in Paragraph 9 of the Petition.

10. Respondent admits the allegations set forth in Paragraph 10 of the Petition.

11. Respondent admits the allegations set forth in Paragraph 11 of the Petition.

12. Respondent admits that RCW 41.56.028(2)(d) provides that the interest arbitration provisions contained in RCW 41.56.430 – .470 and RCW 41.56.480 apply to family child care providers in Petitioner's

bargaining unit, and denies all remaining allegations set forth in Paragraph 12 of the Petition.

13. Respondent admits that RCW 41.56.028(5) is accurately quoted in Paragraph 13 of the Petition. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 13 of the Petition, and to the extent any allegations set forth in Paragraph 13 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

14. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 14 of the Petition, and to the extent any allegations set forth in Paragraph 14 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

15. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 15 of the Petition, and to the extent any allegations set forth in Paragraph 15 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

16. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 16 of the Petition, and to the extent any allegations set forth

in Paragraph 16 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

17. Respondent admits that the State has developed programs that assist qualifying families in paying for child care services, and admits that parents receiving child care subsidies may choose their child care provider. Respondent admits that the Department of Early Learning (DEL) licenses and regulates family child care providers, who typically operate out of their own homes, and denies all remaining allegations set forth in Paragraph 17 of the Petition.

18. Respondent admits that Local 925 represents licensed and license-exempt family child care providers providing care to families whose children receive child care subsidies. Respondent denies all remaining allegations set forth in Paragraph 18 of the Petition.

19. Respondent admits that SEIU Local 925 is the exclusive bargaining representative for family child care providers. Respondent lacks sufficient information to admit the remaining allegations set forth in Paragraph 19 of the Petition and therefore denies the same.

20. Respondent admits that the Labor Relations Office, a division of the State's Office of Financial Management (OFM), entered into negotiations with the Petitioner in 2006, and that certain issues were certified for interest arbitration after the parties reached impasse on those

issues during bargaining over the first labor contract, covering the 2007-09 biennium. Respondent admits that the parties were aware of the statutory deadline for bargaining. Respondent denies all remaining allegations set forth in Paragraph 20 of the Petition.

21. Respondent admits that Arbitrator Timothy Williams issued a timely arbitration award deciding a number of issues that had been certified for interest arbitration after the parties reached impasse during bargaining over the labor contract for the 2007-09 biennium, and admits that funding to implement the provisions of the contract, including provisions decided in the arbitrator's award, was included in the Governor's budget document and approved by the Legislature in 2007. Respondent denies all remaining allegations set forth in Paragraph 21 of the Petition.

22. Respondent admits that the parties commenced bargaining on the 2009-11 labor contract in 2008, and that although the parties reached agreement on most issues, three issues certified for interest arbitration were decided by Arbitrator Michael Cavanaugh. Respondent admits that the arbitration hearing occurred between August 4 and 8, 2008, and denies all remaining allegations set forth in Paragraph 22 of the Petition.

23. Respondent admits the allegations set forth in Paragraph 23 of the Petition.

24. Respondent admits that Arbitrator Cavanaugh issued an award on August 25, 2008. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 24 of the Petition, and to the extent any allegations set forth in Paragraph 24 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

25. Respondent admits that the State presented evidence regarding the State's ability to pay, based on the most recent financial data available at the time of the arbitration hearing. Respondent admits that Arbitrator Cavanaugh addressed the State's ability to pay, and that a portion of his written observations on that subject are accurately quoted in Paragraph 25 of the Petition. Respondent denies all remaining allegations set forth in Paragraph 25 of the Petition.

26. Respondent admits that Arbitrator Cavanaugh declined to adopt Petitioner's proposed subsidy rates, and admits that the rationale underlying his decision on this issue is accurately set forth, in part, within Paragraph 26 of the Petition.

27. Respondent admits that Arbitrator Cavanaugh's award included a 1.6% subsidy rate increase for the first year of the contract for

licensed and license-exempt providers, and a 2.0% increase for the second year. Respondent admits that the arbitration award included an enhanced toddler rate. Respondent denies all remaining allegations set forth in Paragraph 27 of the Petition.

28. Respondent admits that on or before October 1, 2008, the director of OFM was provided with a fiscal summary explaining the costs required to fund contract issues decided in the arbitration award in addition to a summary of costs associated with monetary issues successfully negotiated by the parties without the necessity of interest arbitration, as part of the process required for requesting funding for the labor contract. Respondent denies all remaining allegations set forth in Paragraph 28 of the Petition.

29. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 29 of the Petition, and to the extent any allegations set forth in Paragraph 29 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

30. Respondent admits that on December 18, 2008, the Governor submitted a budget document to the Legislature in accordance with RCW 43.88.030 and RCW 43.88.060.

31. Respondent admits that the submitted budget document does not contain a request for funds necessary to implement the compensation and fringe benefit increases negotiated by the parties, and does not contain a request for funds to implement the subsidy rate increases decided through interest arbitration. Respondent admits that the submitted budget document does not contain recommended legislation to implement subsidy rate and fringe benefit increases.

32. Respondent admits that the director of OFM's Labor Relations Office sent a letter to a number of labor organizations on December 18, 2008, and that a portion of that letter is quoted accurately in Paragraph 32 of the Petition. Respondent admits that the director of OFM sent a letter to the Governor dated December 17, 2008, and that a portion of that letter is accurately quoted in Paragraph 32 of the Petition.

33. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 33 of the Petition, and to the extent any allegations set forth in Paragraph 33 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

34. Although legal conclusions need not be the subject of factual pleading, Respondent denies any and all legal conclusions set forth in Paragraph 34 of the Petition, and to the extent any allegations set forth

in Paragraph 34 purport to interpret the meaning of RCW 41.56.028, Respondent denies those allegations.

35. Although legal conclusions and arguments over the significance of evidence need not be the subject of factual pleading, Respondent denies that this letter constitutes an “implicit” admission, and denies all remaining allegations set forth in Paragraph 35 of the Petition.

36. Respondent admits that Wolfgang Opitz testified in the interest arbitration hearing involving the State and SEIU Healthcare 775NW, the exclusive bargaining representative for individual providers. Respondent denies the remaining allegations set forth in Paragraph 36 of the Petition.

37. Respondent admits that an excerpt from Mr. Opitz’s testimony is accurately quoted in Paragraph 37 of the Petition. Respondent denies all remaining allegations set forth in Paragraph 37 of the Petition.

38. Respondent denies the allegations in Paragraph 38 of the Petition.

39. Respondent denies the allegations in Paragraph 39 of the Petition.

40. Although legal conclusions and arguments need not be the subject of factual pleading, Respondent denies the arguments and opinions

expressed in Paragraph 40 of the Petition, and further denies that the Legislature's ability to fund compensation increases decided in the arbitrator's award or agreed to by the parties in bargaining is legally impaired by the Governor's decision not to include funding for those increases in the Governor's budget document. Respondent denies all remaining allegations set forth in Paragraph 40 of the Petition.

41. Although legal conclusions, arguments and individual opinions about governmental processes need not be the subject of factual pleading, Respondent denies all allegations set forth in Paragraph 41 of the Petition.

42. Although legal conclusions, arguments and individual opinions about governmental processes need not be the subject of factual pleading, Respondent denies all allegations set forth in Paragraph 42 of the Petition.

43. Respondent denies the allegations set forth in Paragraph 43 of the Petition.

44. Respondent denies the allegations set forth in Paragraph 44 of the Petition.

II. AFFIRMATIVE DEFENSES

By way of further answer and affirmative defense, Respondent alleges as follows:

1. The Petition fails to state a claim upon which relief can be granted;
2. The Court lacks jurisdiction over the subject matter of this action;
3. This action is not justiciable;
4. Respondent's actions, herein alleged by Petitioner as unlawful, constitute the lawful exercise of the Governor's discretion and authority, and are therefore not actionable;
5. The relief requested in this action is barred by the separation of powers doctrine;
6. Because Petitioner cannot demonstrate that there is not a plain, speedy, and adequate remedy in the ordinary course of law, a writ of mandamus should not be issued in this action.

III. REQUEST FOR RELIEF

Respondent denies that Petitioner is entitled to the demands for relief requested in Paragraphs 45, 46, 47, and 48 of the Petition, and respectfully requests relief as follows:

1. That this Petition be dismissed, and that no relief be granted to Petitioner;
2. That each party bear its own costs; and

3. For such other and further relief as this Court deems just
and appropriate.

RESPECTFULLY SUBMITTED this 20th day of January, 2009.

ROBERT M. McKENNA
Attorney General

A handwritten signature in black ink, appearing to read 'Stewart Johnston', is written over the printed name.

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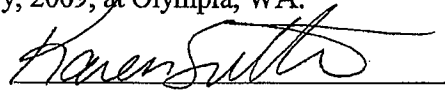
I certify that I served a copy of this document on all parties or their
counsel of record on the date below as follows:

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I certify under penalty of perjury under the laws of the state of
Washington that the foregoing is true and correct.

DATED this 20th day of January, 2009, at Olympia, WA.


Karen Sutter, Legal Assistant